

PAUL C. DETERS

IBLA 83-939

Decided April 3, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-85013.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases:  
Rentals

Where, following a drawing of simultaneously filed oil and gas lease applications, the first drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice, the application is properly rejected.

APPEARANCES: Paul C. Deters, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Paul C. Deters' simultaneously filed oil and gas lease application was selected for first priority for parcel WY-297 in the March 1983 simultaneous drawing.

On June 24, 1983, the Bureau of Land Management (BLM) sent the lease agreement and a request for submission of the first year's rental to Deters' record address in Glandorf, Ohio. The return receipt card shows that one Mary L. Deters signed the card on June 27, 1983.

Regulation 43 CFR 3112.4-1 provides, in part, that the executed lease agreement and first year's rental must be filed in the proper BLM office within 30 days of receipt of notice. 1/ Deters failed to submit the executed lease agreement and rental within the time allowed. 2/

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1/ On July 22, 1983, the oil and gas regulations were substantially revised. This requirement is now contained in 43 CFR 3112.6-1(a). 48 FR 33648, 33680.

2/ The record indicates that to date Deters has not filed the executed lease agreement or rental.

On August 1, 1983, BLM issued its decision rejecting Deters' application based on 43 CFR 3112.4-1 and 43 CFR 3112.6-1(d). <sup>3/</sup> Deters appealed claiming that at the time the notice was sent to him he was seriously injured as a result of a fall. He claims that he was confined to his home and that the "notice was sent to my office making it impossible for me to receive it." He requests that his failure to file be excused because of his injuries.

[1] The regulations requiring execution of the lease agreement and payment of the advance rental within 30 days of notice are mandatory. Despite appellant's allegation of lack of receipt of notice, the record shows that the notice was received at his record address. Under 43 CFR 1810.2, appellant is considered to have received the notice. The regulations provide no leeway for consideration of excuses for failure to pay. See Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975); see also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980). BLM may not accept the forms and payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

R. W. Mullen  
Administrative Judge

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<sup>3/</sup> 43 CFR 3112.6-1(d) states that "[t]he application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title." The regulation was renumbered as 43 CFR 3112.5-1(c). 48 FR 33679 (July 22, 1983).

